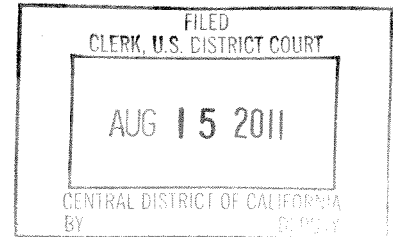


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COPY



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR WESTERN
CORPORATE FEDERAL CREDIT UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, TODD M. LANE,
ROBERT J. BURRELL, THOMAS E.
SWEDBERG, and TIMOTHY T. SIDLEY,

Defendants.

CASE NO. CV10-01597 GW
(MANx)

**ANSWER AND
COUNTERCLAIM OF
DEFENDANTS ROBERT A.
SIRAVO AND THOMAS E.
SWEDBERG TO SECOND
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

ROBERT A. SIRAVO and THOMAS E.
SWEDBERG,

Counterclaimants,

vs.

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR WESTERN
CORPORATE FEDERAL CREDIT UNION,

Counterclaim Defendant.

ANSWER AND COUNTERCLAIM OF
DEFENDANTS SIRAVO AND SWEDBERG
TO SECOND AMENDED COMPLAINT

1 Defendants Robert A. Siravo ("Siravo") and Thomas E. Swedberg
2 ("Swedberg") hereby answer the Second Amended Complaint of Plaintiff National
3 Credit Union Administration Board ("NCUA") as Liquidating Agent of Western
4 Corporate Federal Credit Union ("WesCorp") as follows:

5 **JURISDICTION AND VENUE**

6 1. Siravo and Swedberg admit that WesCorp was a credit union with its
7 corporate offices located in San Dimas, California, that WesCorp was placed into
8 conservatorship by the NCUA Board on March 19, 2009, and that WesCorp was
9 placed into involuntary liquidation on October 1, 2010. The remainder of
10 Paragraph 1 contains legal conclusions, to which no response is required.

11 2. Paragraph 2 contains legal conclusions, to which no response is
12 required. To the extent a response is required, Siravo and Swedberg lack
13 knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations of Paragraph 2 and on that basis deny those allegations.

15 3. Paragraph 3 contains legal conclusions, to which no response is
16 required, but Siravo and Swedberg admit that the court has subject matter
17 jurisdiction.

18 4. Paragraph 4 contains legal conclusions, to which no response is
19 required, but Siravo and Swedberg admit that they are residents of California and
20 are subject to the personal jurisdiction of the court.

21 5. Paragraph 5 contains legal conclusions, to which no response is
22 required, but Siravo and Swedberg admit that venue is proper in this district.

23 **PARTIES**

24 6. Siravo and Swedberg admit that the NCUA is the liquidating agent
25 for WesCorp.

26 7. Siravo and Swedberg admit that Siravo was the President and CEO of
27 WesCorp from on or about May 1, 2002 to or about March 20, 2009, and that he is
28 a resident of California.

1 8. Siravo and Swedberg admit that Todd M. Lane ("Lane") served as
2 Chief Financial Officer of WesCorp. Siravo and Swedberg lack knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations
4 of Paragraph 8 and on that basis deny those allegations.

5 9. Siravo and Swedberg admit that Robert J. Burrell ("Burrell") served
6 as Executive Vice President and as the Chief Investment Officer for WesCorp.
7 Siravo and Swedberg lack knowledge or information sufficient to form a belief as
8 to the truth of the remaining allegations of Paragraph 9 and on that basis deny
9 those allegations.

10 10. Siravo and Swedberg admit that Timothy T. Sidley ("Sidley") served
11 as Vice President for Risk Assessment and as Chief Risk Officer in charge of
12 investment credit services during his employment at WesCorp. Siravo and
13 Swedberg lack knowledge or information sufficient to form a belief as to the truth
14 of the remaining allegations of Paragraph 10 and on that basis deny those
15 allegations.

16 11. Siravo and Swedberg admit that Swedberg served as WesCorp's
17 Director of Human Resources from October 1998 until sometime in 1999; he
18 became the Vice President of Human Resources in 1999 until approximately April
19 or May 2007; he served as Vice President of Strategic Planning and
20 Organizational Development from approximately April or May 2007 to December
21 31, 2008; he retired from WesCorp on July 2009, that he worked as an employee
22 on a consultant basis for WesCorp from January 1, 2009 until July 2009; and he is
23 a resident of California.

24 12. Siravo and Swedberg admit that Robert H. Harvey, Jr. ("Harvey")
25 was a director and the Chairman of the WesCorp board of directors, and that he is
26 a resident of the state of Washington. Siravo and Swedberg lack knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations
28 of Paragraph 12 and on that basis deny those allegations.

1 13. Siravo and Swedberg admits that James P. Jordan ("Jordan") was a
2 member of the WesCorp board of directors and was the Vice Chairman of the
3 WesCorp board. Siravo and Swedberg lack knowledge or information sufficient
4 to form a belief as to the truth of the remaining allegations of Paragraph 13 and on
5 that basis deny those allegations.

6 14. Siravo and Swedberg admit that Timothy Kramer ("Kramer") was a
7 member of the WesCorp board of directors and served as the Secretary and
8 Treasurer of the WesCorp board. Siravo and Swedberg lack knowledge or
9 information sufficient to form a belief as to the truth of the remaining allegations
10 of Paragraph 14 and on that basis deny those allegations.

11 15. Siravo and Swedberg admit that Robin J. Lentz ("Lentz") was a
12 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
13 or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 15 and on that basis deny those allegations.

15 16. Siravo and Swedberg admit that John M. Merlo ("Merlo") was a
16 member of the WesCorp board of directors and that he is a resident of California.
17 Siravo and Swedberg lack knowledge or information sufficient to form a belief as
18 to the truth of the remaining allegations of Paragraph 16 and on that basis deny
19 those allegations.

20 17. Siravo and Swedberg admit that Gordon Dames ("Dames") was a
21 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
22 or information sufficient to form a belief as to the truth of the remaining
23 allegations of Paragraph 17 and on that basis deny those allegations.

24 18. Siravo and Swedberg admit that William Cheney ("Cheney") was a
25 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
26 or information sufficient to form a belief as to the truth of the remaining
27 allegations of Paragraph 18 and on that basis deny those allegations.
28

1 19. Siravo and Swedberg admit that Warren Nakamura (“Nakamura”)
2 was a member of the WesCorp board of directors. Siravo and Swedberg lack
3 knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations of Paragraph 19 and on that basis deny those allegations.

5 20. Siravo and Swedberg admit that Brian Osberg (“Osberg”) was a
6 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
7 or information sufficient to form a belief as to the truth of the remaining
8 allegations of Paragraph 20 and on that basis deny those allegations.

9 21. Siravo and Swedberg admit that David Rhamy (“Rhamy”) was a
10 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
11 or information sufficient to form a belief as to the truth of the remaining
12 allegations of Paragraph 21 and on that basis deny those allegations.

13 22. Siravo and Swedberg admit that Sharon Updike (“Updike”) was a
14 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge
15 or information sufficient to form a belief as to the truth of the remaining
16 allegations of Paragraph 22 and on that basis deny those allegations.

17 23. Siravo and Swedberg admit the allegations of Paragraph 23.

18 24. Siravo¹ admits that WesCorp’s Asset and Liability Committee
19 (“ALCO) had oversight responsibility for WesCorp’s asset liability management
20 process, including investments. Siravo lacks knowledge or information sufficient
21 to form a belief as to the truth of the remaining allegations of Paragraph 24 and on
22 that basis denies those allegations, except to the extent they reference the contents
23 of WesCorp’s corporate policies, which speak for themselves. Siravo refers to
24

25 ¹ Paragraphs 24 through 153 are not incorporated in either the Fifth Claim or the Sixth Claim for
26 Relief, which are the only claims asserted against Swedberg in the Second Amended Complaint.
27 Accordingly, it is not necessary for Swedberg to respond to Paragraphs 24 through 153, except
28 for Paragraph 42 and 43, which specifically include allegations against Swedberg. To the extent
that a response is required, Swedberg incorporates and adopts Siravo’s responses in this Answer
to the allegations set forth in Paragraph 24 through 41 and 44 through 153 of the Second
Amended Complaint..

1 WesCorp's corporate policies for their contents and denies any characterization
2 inconsistent with their terms.

3 25. Siravo admits that the ALCO had responsibilities for WesCorp's
4 investment strategies, including investments, policies and strategies, concentration
5 limits, and the purchase and sale of securities, and directing the types and level of
6 risk. Siravo lacks knowledge or information sufficient to form a belief as to the
7 truth of the remaining allegations of Paragraph 25 and on that basis denies those
8 allegations.

9 26. Siravo admits that board members attended ALCO meetings and
10 received ALCO materials along with monthly board packages. Siravo lacks
11 knowledge or information sufficient to form a belief as to the truth of the
12 remaining allegations of Paragraph 26 and on that basis denies those allegations.

13 27. Siravo admits that WesCorp's budget was reviewed by the budget
14 committee of the Board of Directors, which recommended it before it was
15 approved by the Board. Siravo lacks knowledge or information sufficient to form
16 a belief as to the truth of the remaining allegations of Paragraph 27 and on that
17 basis denies those allegations.

18 28. Paragraph 28 contains legal conclusions, to which no response is
19 required. To the extent the allegations require a response, they are denied.

20 29. Paragraph 29 contains legal conclusions, to which no response is
21 required.

22 SUMMARY OF CLAIMS

23 30. Siravo admits that WesCorp was a non-profit corporate credit union,
24 that its members were credit unions, and that it provided its members with banking
25 and investment services for their funds. The remaining allegations of Paragraph
26 30 contain legal conclusions, to which no response is required. To the extent the
27 remaining allegations require a response, they are denied.

1 31. Siravo admits that WesCorp was a leading corporate federal credit
2 union and provided its members with banking and investment services for their
3 funds. Siravo also admits that he became President and CEO of WesCorp in 2002,
4 and that, with the knowledge and consent of the NCUA, WesCorp thereafter grew
5 in size. Siravo denies the remaining allegations of Paragraph 31.

6 32. Siravo admits that WesCorp invested its members' funds and
7 borrowed funds in securities, including private label mortgage backed securities
8 ("MBS") that were not guaranteed by the United States or its agencies. Siravo
9 denies the remaining allegations of Paragraph 32.

10 33. Siravo lacks knowledge or information sufficient to form a belief as
11 to the truth of the allegations of Paragraph 33 and on that basis denies them.

12 34. Siravo admits that WesCorp used income from its investments to pay
13 operating expenses. Siravo lacks knowledge or information sufficient to form a
14 belief as to the truth of the remaining allegations of Paragraph 34 and on that basis
15 denies those allegations.

16 35. Siravo denies the allegations of Paragraph 35.

17 36. Siravo admits that WesCorp invested in MBS, including MBS based
18 on reduced documentation Option ARM loans. Siravo lacks knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations
20 of Paragraph 36 and on that basis denies those allegations.

21 37. Siravo denies the allegations of Paragraph 37.

22 38. Siravo admits that WesCorp invested in MBS, including MBS based
23 on reduced documentation Option ARM loans. Siravo lacks knowledge or
24 information sufficient to form a belief as to the remaining allegations of Paragraph
25 38 and on that basis denies those allegations.

26 39. Siravo admits that WesCorp purchased AAA rated and AA rated
27 MBS that were underwritten by the world's leading investment banks and denies
28 the remaining allegations of Paragraph 39.

1 40. Siravo lacks knowledge or information to form a belief as to the truth
2 of the allegations of Paragraph 39, and on that basis denies them, except to the
3 extent they reference the contents of WesCorp's 2009 financial statements, which
4 speak for themselves. Siravo refers to WesCorp's 2009 financial statements for
5 their contents and denies any characterization inconsistent with their terms.

6 41. Siravo denies that WesCorp's officers failed to impose prudent
7 concentration limits. Siravo lacks knowledge or information sufficient to form a
8 belief as to the truth of the remaining allegations of Paragraph 41, and on that
9 basis denies those allegations.

10 42. Siravo and Swedberg admit that their Supplemental Executive
11 Retention Plans ("SERPs") for Siravo and other Executive participants were
12 amended in 2007 and 2008, which increased the amount that they received upon
13 their retirement from WesCorp. Siravo and Swedberg also admit that WesCorp
14 entered into an agreement with Lane for the payments in 2006, 2007, and 2008 in
15 lieu of any payments under his SERP. Siravo and Swedberg deny that they
16 engineered amendments to the SERPs or falsely characterized the amendments,
17 and deny that there were no *bona fide* business reasons for the payments to Lane.
18 Siravo and Swedberg lack knowledge or information to form a belief as to the
19 truth of the remaining allegations of Paragraph 42, and on that basis deny those
20 allegations.

21 43. Siravo and Swedberg deny the allegations of Paragraph 43.

22 **FACTUAL ALLEGATIONS**

23 **The Federal Credit Union System**

24 44. Siravo admits that the federal credit union system is a three-tier
25 system consisting of (1) one wholesale corporate credit union (U.S. Central
26 Federal Credit Union); (2) retail corporate credit unions; and (3) "natural person"
27 credit unions. Siravo further admits that the wholesale corporate credit union
28 provides services to the retail corporate credit unions, while the retail corporate

1 credit unions provide services to both federally-chartered and state-chartered
2 natural person credit unions. Siravo lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations of Paragraph 44 and on
4 that basis those allegations.

5 45. Siravo admits that WesCorp was a retail corporate credit union.
6 Siravo lacks knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations of Paragraph 45 and on that basis denies those
8 allegations.

9 46. Siravo admits that corporate credit unions are owned by their
10 members and that in the case of retail corporate credit unions, the members are
11 primarily natural person credit unions. Siravo lacks knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
13 46 and on that basis denies those allegations.

14 47. Siravo admits that retail corporate credit unions provide services and
15 support to their natural person credit union members. Siravo admits that retail
16 corporate credit unions offer their natural person credit unions banking and
17 investment services for their funds, and that these services may include settlement
18 of transactions such as checks, ATM and credit card transactions and wire
19 transfers, and that they allow their members to borrow funds. Siravo lacks
20 knowledge or information sufficient to form a belief as to the truth of the
21 remaining allegations of Paragraph 47 and on that basis denies those allegations.

22 48. Siravo lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations of Paragraph 48 and on that basis denies them,
24 except to the extent they reference the contents of WesCorp's website, which
25 speaks for itself. Siravo refers to WesCorp's website for its contents and denies
26 any characterization inconsistent with its terms.

1 49. Siravo admits that WesCorp had by-laws, which speak for
2 themselves. Siravo refers to WesCorp's bylaws for their contents and denies any
3 characterization inconsistent with their terms.

4 50. Siravo lacks knowledge or information sufficient to form a belief as
5 to the truth of the allegations of Paragraph 50 and on that basis denies them.

6 51. Siravo admits that WesCorp provided services to its members, and
7 that Chief Executive Officers of credit unions were members of its Board of
8 Directors. Siravo lacks knowledge or information sufficient to form a belief as to
9 the truth of the remaining allegations of Paragraph 51 and on that basis denies
10 those allegations.

11 **The Officer Defendants' Responsibilities and Duties**

12 52. Siravo lacks knowledge or information sufficient to form a belief as
13 to the truth of the allegations of Paragraph 52 and on that basis denies those
14 allegations, except to the extent the allegations reference the contents of
15 WesCorp's by-laws and corporate policies, which speak for themselves. Siravo
16 refers to WesCorp's by-laws and corporate policies for their contents and denies
17 any characterization inconsistent with their terms.

18 53. Siravo admits that he served as President and CEO of WesCorp, and
19 that he had responsibilities for overseeing WesCorp's operations and investments.
20 Siravo denies the remaining allegations of Paragraph 53.

21 54. Siravo admits that he served as President and CEO of WesCorp. The
22 remaining allegations of Paragraph 54 contain legal conclusions, to which no
23 response is required. To the extent that a response is required, they are denied.

24 55. Siravo admits that Lane served as Chief Financial Officer of
25 WesCorp, had general supervisory responsibilities, and had responsibilities for
26 WesCorp's financial statements, financial operations, and budgets. Siravo lacks
27 knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations of Paragraph 55 and on that basis denies those allegations.

1 56. Siravo admits that Burrell admits that he served as Chief Investment
2 Officer for WesCorp and had responsibilities for WesCorp's investments and for
3 supervising WesCorp's Investment Department. Siravo lacks knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations
5 of Paragraph 56 and on that basis denies those allegations.

6 57. Siravo admits that Siravo worked with Lane and Burrell, among
7 others, to manage WesCorp and implement its business strategies, including its
8 investment strategies. Siravo lacks knowledge or information sufficient to form a
9 belief as to the truth of the remaining allegations of Paragraph 56 and on that basis
10 denies those allegations.

11 58. Siravo admits that Sidley served as Vice President of Risk
12 Assessment, and that the Director of Investment Credit Services reported to
13 Sidley. Siravo lacks knowledge or information sufficient to form a belief as to the
14 truth of the remaining allegations of Paragraph 58 and on that basis denies those
15 allegations.

16 59. Siravo admits that WesCorp created an Asset/Liability Staff
17 Committee ("ALSC") and that the ALSC had responsibilities for reviewing
18 investment security purchases and investment strategies. Siravo lacks knowledge
19 or information sufficient to form a belief as to the truth of the remaining
20 allegations of Paragraph 59 and on that basis denies those allegations.

21 60. Siravo admits that Siravo, Burrell and Lane served as voting members
22 of ALCO and ALSC, and that Sidley served as a non-voting member of ALSC and
23 a staff liaison to ALCO. Siravo denies the remaining allegations of Paragraph 60.

24 **WesCorp's Era of Growth**

25 61. Siravo lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations of Paragraph 61 and on that basis denies them.

27 62. Siravo admits that he became President and CEO of WesCorp in 2002
28 and that, with the knowledge and consent of the NCUA, WesCorp thereafter grew

1 in size. Siravo lacks knowledge or information sufficient to form a belief as to the
2 remaining allegations of Paragraph 62 and on that basis denies those allegations.

3 63. Siravo admits that, with the knowledge and consent of the NCUA,
4 WesCorp grew in size after 2002. Siravo lacks knowledge or information
5 sufficient to form a belief as to the truth of the allegations of Paragraph 63 and on
6 that basis denies them.

7 64. Siravo lacks knowledge or information sufficient to form a belief as
8 to the truth of the allegations of Paragraph 64 and on that basis denies them.

9 65. Siravo lacks knowledge or information sufficient to form a belief as
10 to the truth of the allegations of Paragraph 65 and on that basis denies them.

11 66. Siravo lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations of Paragraph 66 and on that basis denies them.

13 67. Siravo admits that WesCorp invested in MBS, including private label
14 MBS that had higher yields than MBS issued by government agencies. Siravo
15 lacks knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations of Paragraph 67 and on that basis denies those allegations.

17 68. Siravo lacks knowledge or information sufficient to form a belief as
18 to the truth of the allegations of Paragraph 68 and on that basis denies them,
19 except to the extent the allegations reference the contents of WesCorp's corporate
20 policies, which speak for themselves. Siravo refers to WesCorp's corporate
21 policies for their contents and denies any characterization inconsistent with their
22 terms.

23 69. Siravo lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of Paragraph 69 and on that basis denies them.

25 70. Siravo admits that his compensation and the compensation of other
26 WesCorp executives increased from 2002 to 2008, but lacks knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations
28 of Paragraph 70 and on that basis denies those allegations.

WesCorp's Private Label MBS Investments

71. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 and on that basis denies them.

72. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72 and on that basis denies them.

73. Siravo admits that WesCorp invested in AAA rated and AA rated private label MBS. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 73 and on that basis denies those allegations, except to the extent the allegations reference the contents of the NCUA's regulations and WesCorp's investment policies, which speak for themselves. Siravo refers to the NCUA's regulations and WesCorp's investment policies for their contents and denies any characterization inconsistent with their terms.

74. Siravo admits that between 2004 and 2007 WesCorp invested in AAA rated MBS, including Collateralized Debt Obligations ("CDOs") and Option ARM MBS. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 74 and on that basis denies those allegations.

75. Siravo admits that MBS are shares in a pool of mortgages and CDOs are shares in a pool of MBS. Siravo also admits that there are risks associated with investments in MBS and CDOs. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 75 and on that basis denies those allegations

76. Siravo admits that WesCorp purchased CDOs. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 76 and on that basis denies those allegations.

77. Siravo admits that Option ARM MBS are investments in Option ARM mortgages, and that Option ARM mortgages have payment terms, that

1 monthly payments can “reset,” and they can have a negative amortization. Siravo
2 lacks knowledge or information sufficient to form a belief as to the remaining
3 allegations of Paragraph 77 and on that basis denies those allegations.

4 78. Siravo lacks knowledge or information sufficient to form a belief as
5 to the truth of the allegations of Paragraph 78 and on that basis denies them.

6 79. Siravo lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 79 and on that basis denies them.

8 80. Siravo admits that WesCorp invested in Option ARM MBS, including
9 Option ARM MBS that included reduced documentation Option ARM loans.
10 Siravo lacks knowledge or information sufficient to form a belief as to the truth of
11 the remaining allegations of Paragraph 80 and on that basis denies those
12 allegations.

13 81. Siravo admits that MBS investments were sold in tranches and that
14 WesCorp invested in some AAA rated and AA rated MBS that paid a higher yield
15 than other AAA rated and AA rated MBS. Siravo lacks knowledge or information
16 sufficient to form a belief as to the truth of the allegations of Paragraph 81 and on
17 that basis denies those allegations.

18 82. Siravo admits that WesCorp invested in AA rated MBS as well as
19 AAA rated MBS. Siravo lacks knowledge or information sufficient to form a
20 belief as to the truth of the remaining allegations of Paragraph 82 and on that basis
21 denies those allegations.

22 83. Siravo lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations of Paragraph 83 and on that basis denies them.

24 84. Siravo admits that WesCorp invested in AAA rated Option ARM
25 MBS. Siravo lacks knowledge or information sufficient to form a belief as to the
26 truth of the remaining allegations of Paragraph 84 and on that basis denies those
27 allegations.
28

WesCorp's Budgets

85. Siravo admits that WesCorp's management proposed budgets, that budgets were considered and recommended by the Budget Committee of the Board of Directors, that budgets were adopted by WesCorp's Board of Directors, and that he worked on budgets with Lane and Burrell. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 85 and on that basis denies those allegations.

86. Paragraph 86 contains legal conclusions, to which no response is required. To the extent the allegations require a response, they are denied.

87. Paragraph 87 contains legal conclusions, to which no response is required. To the extent the allegations require a response, Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 87 and on that basis denies them.

88. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 88 and on that basis denies them, except to the extent the allegations reference the contents of WesCorp's budgets and executive summaries, which speak for themselves. Siravo refers to WesCorp's budgets and the executive summaries for their contents and denies any characterization inconsistent with their terms.

89. Siravo denies that Siravo, Burrell and Lane dictated the level of risk in WesCorp's investment portfolio. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 89 and on that basis denies those allegations.

90. Siravo admits that when he was WesCorp's CEO, WesCorp's management proposed budgets that were considered and recommended by the Budget Committee and adopted by WesCorp's Board of Directors, and that he worked on the budgets with Lane and Burrell. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations

1 of Paragraph 90 and on that basis denies those allegations, except to the extent the
2 allegations reference the contents of WesCorp's budgets, which speak for
3 themselves. Siravo refers to WesCorp's budgets for their contents and denies any
4 characterization inconsistent with their terms.

5 91. Siravo denies the allegations of Paragraph 91.

6 92. Siravo lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 92 and on that basis denies them.

8 93. Siravo lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations of Paragraph 93 and on that basis denies them.

10 94. Siravo lacks knowledge or information sufficient to form a belief as
11 to the truth of the allegations of Paragraph 94, and on that basis denies them,
12 except to the extent they reference the contents of WesCorp's budgets, which
13 speak for themselves. Siravo refers to WesCorp's budgets for their contents and
14 denies any characterization inconsistent with their terms.

15 95. Siravo lacks knowledge or information sufficient to form a belief as
16 to the truth of the allegations of Paragraph 95, and on that basis denies them,
17 except to the extent they reference materials presented to the Budget Committee,
18 which speak for themselves. Siravo refers to these materials for their contents and
19 denies any characterization inconsistent with their terms.

20 96. Siravo admits that directors attended ALCO meetings. Siravo lacks
21 knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations of Paragraph 96 and on that basis denies them.

23 97. Siravo lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of Paragraph 97 and on that basis denies them,
25 except to the extent they reference the contents of WesCorp's ALCO books, which
26 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents
27 and denies any characterization inconsistent with their terms.

28

1 98. Siravo lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations of Paragraph 98 and on that basis denies them.

3 99. Siravo lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations of Paragraph 99 and on that basis denies them.

5 100. Paragraph 100 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, they are denied.

7 101. Paragraph 101 contains legal conclusions, to which no response is
8 required. To the extent the allegations require a response, they are denied.

9 102. Siravo lacks knowledge or information sufficient to form a belief as
10 to the truth of the allegations of Paragraph 102 and on that basis denies them.

11 103. Siravo denies the allegations of Paragraph 103.

12 104. Siravo denies the allegations of Paragraph 104.

13 **MBS Concentration Risk**

14 105. Siravo lacks knowledge or information sufficient to form a belief as
15 to the truth of the allegations of Paragraph 105 and on that basis denies them,
16 except to the extent they reference the contents of the NCUA's regulations, which
17 speak for themselves. Siravo refers to the NCUA's regulations for their contents
18 and denies any characterization inconsistent with their terms.

19 106. Siravo lacks knowledge or information sufficient to form a belief as
20 to the truth of the allegations of Paragraph 106 and on that basis denies them.

21 107. Siravo admits that WesCorp provided services to its members and
22 invested their funds. Siravo lacks knowledge or information sufficient to form a
23 belief as to the truth of the remaining allegations of Paragraph 107 and on that
24 basis denies those allegations.

25 108. Siravo admits that WesCorp's Board of Directors was responsible for
26 setting investment policies. Siravo lacks knowledge or information sufficient to
27 form a belief as to the truth of the remaining allegations of Paragraph 108 and on
28 that basis denies those allegations, except to the extent they reference the contents

1 of WesCorp's corporate and investment policies, which speak for themselves.
2 Siravo refers to WesCorp's corporate and investment policies for their contents
3 and denies any characterization inconsistent with their terms.

4 109. Siravo admits that the ALCO had responsibilities for reviewing
5 WesCorp's investments and investment policies. Siravo lacks knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations
7 of Paragraph 109 and on that basis denies those allegations.

8 110. Siravo admits that Sidley headed WesCorp's Risk Assessment
9 Department and Burrell headed the Investment Department. Paragraph 110
10 contains legal conclusions, to which no response is required. To the extent the
11 allegations require a response, Siravo lacks knowledge or information sufficient to
12 form a belief as to the truth of the remaining allegations of Paragraph 110 and on
13 that basis denies those allegations.

14 111. Siravo admits that WesCorp's Board of Directors adopted policies
15 regarding its investment securities, which corporate policies speak for themselves,
16 and that from time to time it amended its policies. Siravo refers to WesCorp's
17 corporate policies for their contents and denies any characterization inconsistent
18 with their terms. Siravo lacks knowledge or information sufficient to form a belief
19 as to the truth of the remaining allegations of Paragraph 111 and on that basis
20 denies those allegations.

21 112. Siravo lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations of Paragraph 112 and on that basis denies them.

23 113. Siravo lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of Paragraph 113 and on that basis denies them.

25 114. Siravo admits that WesCorp invested in AAA rated private label
26 MBS. Siravo lacks knowledge or information sufficient to form a belief as to the
27 truth of the remaining allegations of Paragraph 114 and on that basis denies those
28 allegations.

The Risks of Option ARM MBS

115. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's corporate policies, which speak for themselves. Siravo refers to WesCorp's corporate policies for their contents and denies any characterization inconsistent with their terms.

116. Siravo admits that WesCorp purchased Option ARM MBS, but denies that they were a new security type. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 116 and on that basis denies those allegations.

117. Siravo admits that WesCorp purchased Option ARM MBS with the approval of WesCorp's Board of Directors and the ALCO, but denies that they were a new security type. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 117 and on that basis denies those allegations.

118. Siravo admits that, with the approval of WesCorp's Board of Directors and the ALCO, WesCorp purchased Option ARM MBS, but denies that they were a new security type. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 118 and on that basis denies those allegations.

119. Siravo denies Option ARM MBS were a new type of security. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 119 and on that basis denies those allegations.

120. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 120 and on that basis denies them.

121. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 121 and on that basis denies them.

1 122. Siravo lacks information or knowledge sufficient to form a belief as
2 to the truth of the allegations of Paragraph 122 and on that basis denies them.

3 123. Siravo lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations of Paragraph 123 and on that basis denies them.

5 124. Paragraph 124 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, they are denied. Siravo
7 denies the remaining allegations of Paragraph 124.

8 125. Siravo lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations of Paragraph 125 and on that basis denies them.

10 126. Siravo lacks information or knowledge sufficient to form a belief as
11 to the truth of the allegations of Paragraph 126 and on that basis denies them.

12 127. Paragraph 127 contains legal conclusions, to which no response is
13 required. To the extent the allegations require a response, they are denied.

14 128. Siravo admits that WesCorp purchased AAA rated and AA rated
15 MBS, but denies that the Officer Defendants did not monitor concentrations of
16 Option ARM MBS. Siravo lacks knowledge or information sufficient to form a
17 belief as to the truth of the remaining allegations of Paragraph 128 and on that
18 basis denies those allegations.

19 129. Siravo denies that WesCorp was unaware of the concentrations of
20 MBS. Siravo lacks information or knowledge sufficient to form a belief as to the
21 truth of the remaining allegations of Paragraph 129 and on that basis denies those
22 allegations.

23 130. Siravo denies that WesCorp was unaware of the concentrations of
24 MBS. Siravo lacks information or knowledge sufficient to form a belief as to the
25 truth of the remaining allegations of Paragraph 130 and on that basis denies those
26 allegations.

27 131. Siravo admits that the Officer Defendants and Directors were aware
28 of the risks of MBS investments. Siravo lacks information or knowledge

1 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
2 131 and on that basis denies them.

3 132. Siravo admits that Burrell served as the officer in charge of the
4 Investment Department and the Chief Investment Officer and that Sidley served as
5 the officer in charge of the Investment Credit Services Department and as the
6 Chief Risk Officer. Paragraph 132 contains legal conclusions, to which no
7 response is required. To the extent these allegations require a response, they are
8 denied. Siravo lacks knowledge or information sufficient to form a belief as to the
9 truth of the remaining allegations of Paragraph 132 and on that basis denies those
10 allegations.

11 133. Siravo denies the allegations of Paragraph 133.

12 **The Risks in WesCorp's Portfolio**

13 134. Siravo lacks information or knowledge sufficient to form a belief as
14 to the truth of the allegations of Paragraph 134 and on that basis denies them.

15 135. Siravo admits that Officer Defendants and Directors attended ALCO
16 meetings at which there were presentations about the economy, investments and
17 WesCorp's investment strategy. Siravo lacks information or knowledge sufficient
18 to form a belief as to the truth of the remaining allegations of Paragraph 135 and
19 on that basis denies those allegations.

20 136. Siravo lacks information or knowledge sufficient to form a belief as
21 to the truth of the allegations of Paragraph 136 and on that basis denies them.

22 137. Siravo admits that Officer Defendants and Directors attended ALCO
23 meetings at which there were presentations on interest rates and the housing
24 market. Siravo lacks information or knowledge sufficient to form a belief as to the
25 truth of the remaining allegations of Paragraph 137 and on that basis denies those
26 allegations.

27 138. Siravo lacks knowledge or information sufficient to form a belief as
28 to the truth of the allegations in Paragraph 138 and on that basis denies them,

1 except to the extent they reference the contents of WesCorp's ALCO books, which
2 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents
3 and denies any characterization inconsistent with its terms.

4 139. Siravo lacks knowledge or information sufficient to form a belief as
5 to the truth of the allegations in Paragraph 139 and on that basis denies them,
6 except to the extent they reference the contents of WesCorp's ALCO books, which
7 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents
8 and denies any characterization inconsistent with its terms.

9 140. Siravo lacks information or knowledge sufficient to form a belief as
10 to the truth of the allegations of Paragraph 140 and on that basis denies them.

11 141. Siravo lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 141 and on that basis denies them,
13 except to the extent they reference the contents of WesCorp's ALCO books, which
14 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents
15 and denies any characterization inconsistent with its terms.

16 142. Siravo lacks knowledge or information sufficient to form a belief as
17 to the truth of the allegations in Paragraph 142 and on that basis denies them,
18 except to the extent they reference the contents of WesCorp's ALCO books, which
19 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents
20 and denies any characterization inconsistent with its terms.

21 143. Siravo admits that WesCorp stopped purchasing AA rated MBS, and
22 that it continued to purchase AAA rated MBS in 2007. Siravo lacks information
23 or knowledge sufficient to form a belief as to the truth of the remaining allegations
24 of Paragraph 143 and on that basis denies those allegations.

25 144. Siravo admits that WesCorp continued to purchase AAA rated Option
26 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.
27 Paragraph 144 contains legal conclusions, to which no response is required. To
28

1 the extent these allegations require a response, they are denied. Siravo denies the
2 remaining allegations of Paragraph 144.

3 145. Paragraph 145 contains legal conclusions, to which no response is
4 required. To the extent the allegations require a response, they are denied.

5 146. Siravo admits that WesCorp continued to purchase AAA rated Option
6 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.
7 Paragraph 146 contains legal conclusions, to which no response is required. To
8 the extent these allegations require a response, they are denied. Siravo lacks
9 information or knowledge sufficient to form a belief as to the truth of the
10 remaining allegations of Paragraph 146 and on that basis denies those allegations.

11 147. Siravo lacks information or knowledge sufficient to form a belief as
12 to the truth of the allegations of Paragraph 147 and on that basis denies them,
13 except to the extent they reference the contents of the NCUA's regulations, which
14 speak for themselves. Siravo refers to the NCUA's regulations for their contents
15 and denies any characterization inconsistent with their terms. Paragraph 147 also
16 contains legal conclusions, to which no response is required. To the extent these
17 allegations require a response, they are denied.

18 **WesCorp's Collapse**

19 148. Siravo lacks information or knowledge sufficient to form a belief as
20 to the truth of the allegations of Paragraph 148 and on that basis denies them.

21 149. Siravo denies that the Officer Defendants or the Director Defendants
22 caused WesCorp's collapse. Siravo lacks knowledge or information sufficient to
23 form a belief as to the truth of the remaining allegations of Paragraph 149 and on
24 that basis denies those allegations.

25 150. Siravo lacks information or knowledge sufficient to form a belief as
26 to the truth of the allegations of Paragraph 150 and on that basis denies them.

27 151. Siravo lacks information or knowledge sufficient to form a belief as
28 to the truth of the allegations of Paragraph 151 and on that basis denies them.

1 152. Siravo lacks information or knowledge sufficient to form a belief as
2 to the truth of the allegations of Paragraph 152 and on that basis denies them.

3 153. Siravo lacks information or knowledge sufficient to form a belief as
4 to the truth of the allegations of Paragraph 153 and on that basis denies them.

5 **The SERP Payments**

6 154. Siravo and Swedberg admit that in November 2001, WesCorp's
7 Board of Directors authorized a Supplemental Retirement Plan (the "Executive
8 SERP") for certain WesCorp executives, and that Swedberg was a participant in
9 the plan.

10 155. Siravo and Swedberg admit that the Executive SERP was part of an
11 Executive Retention Program "to provide certain benefits" and "a measure of
12 peace of mind for certain executives of WesCorp," and that the Executive SERP
13 provided participants with a lump sum payment at their expected retirement dates
14 if they had been employed at WesCorp for at least 10 years and had been a
15 participant in the plan for at least 5 years at the time of their retirement from
16 WesCorp. Siravo and Swedberg deny the remaining allegations of Paragraph 155.

17 156. Siravo and Swedberg admit that, effective May 1, 2002, WesCorp
18 agreed to provide benefits to Siravo under a CEO/President Retention Program,
19 and that these benefits included a lump sum payment under a Supplemental
20 Retirement Plan (the "CEO SERP") that was payable on May 1, 2008 (the
21 "President/CEO Retirement Date"), provided that Siravo was continuously
22 employed by WesCorp until that date. Siravo and Swedberg deny the remaining
23 allegations of Paragraph 156.

24 157. Siravo and Swedberg admit that the Executive SERP and CEO SERP
25 both provided for lump sum benefits determined by a formula where "C is Final
26 Compensation as defined herein;" "Final Compensation" is defined as "monthly
27 base salary paid most recently while [the President/CEO or the Executive] is a
28

1 participant in the Program, multiplied by twelve (12);” and the formula included a
2 40% gross-up for taxes.

3 158. Siravo and Swedberg admit that in the fall of 2007, along with
4 Directors Robert Harvey and John Merlo, they noticed that the lump sum formula
5 in Siravo’s CEO SERP did not account for changes in the nature of the
6 compensation received by WesCorp Executives since the Executive SERP was
7 adopted in 2001, and that the percentage of the gross-up for taxes did not account
8 for all of the taxes owed on the lump sum payments. Siravo and Swedberg also
9 admit that, with the concurrence of Harvey and Merlo, they proposed amendments
10 to the CEO SERP to (1) change the definition of “Final Compensation” to include
11 all compensation received by Siravo and (2) increase the tax gross-up to 67%.
12 Siravo and Swedberg deny the remaining allegations of Paragraph 158.

13 159. Siravo and Swedberg admit that Swedberg prepared materials that
14 explained the proposed amendments to the CEO SERP; that he communicated
15 with members of WesCorp’s Board of Directors regarding the proposed
16 amendments; and that he was no longer the Director of Human Resources for
17 WesCorp, but retained responsibility for Executive Compensation matters with the
18 concurrence of the new Vice President of Human Resources when he
19 communicated with the directors regarding the amendments. Siravo and
20 Swedberg deny the remaining allegations of Paragraph 159.

21 160. Siravo and Swedberg admit that in a memorandum dated November
22 2, 2007, Swedberg advised Robert Harvey, the Chairman of WesCorp’s Board of
23 Directors, that “[i]n preparing for the May 2008 SERP distribution to Bob Siravo,
24 we noticed that there were two administrative errors in the current 457(f) plan
25 document that are not consistent with the intent of the program when it was
26 initially developed.” Siravo and Swedberg deny the remaining allegations of
27 Paragraph 160.

28

1 161. Siravo and Swedberg admit that Swedberg, along with Siravo and
2 Chairman of the Board Harvey and Board member Merlo, developed a proposal to
3 amend the CEO SERP. Siravo and Swedberg lack information or knowledge
4 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
5 161 and on that basis deny those allegations.

6 162. Siravo and Swedberg admit that on or about October 19, 2007,
7 Swedberg prepared a draft of a PowerPoint presentation for WesCorp's Board of
8 Directors, which he sent to Siravo and which speaks for itself. Siravo and
9 Swedberg refer to the PowerPoint for its contents and deny any characterization
10 inconsistent with its terms.

11 163. Siravo and Swedberg deny the allegations of Paragraph 163.

12 164. Siravo and Swedberg admit that Swedberg discussed proposed
13 amendments to the CEO SERP with John Merlo, who suggested changing the
14 presentation from a PowerPoint to a memorandum. Siravo and Swedberg lack
15 information or knowledge sufficient to form a belief as to the truth of the
16 remaining allegations of Paragraph 164 and on that basis deny those allegations.

17 165. Siravo and Swedberg deny the allegations of Paragraph 165.

18 166. Siravo and Swedberg admit that in October 2007, Swedberg
19 discussed proposed amendments to the CEO SERP with Robert Harvey and John
20 Merlo, and that Exhibit 1 to the Second Amended Complaint is a true and correct
21 copy of a memorandum dated November 2, 2007 that Swedberg prepared and sent
22 to Harvey, which memorandum speaks for itself. Siravo and Swedberg refer to the
23 memorandum for its contents and deny any characterization inconsistent with its
24 terms. Siravo and Swedberg lack information or knowledge sufficient to form a
25 belief as to the truth of the remaining allegations of Paragraph 166 and on that
26 basis deny those allegations.

27 167. Siravo and Swedberg deny the allegations of Paragraph 167.

28 168. Siravo and Swedberg deny the allegations of Paragraph 168.

1 169. Siravo and Swedberg admit that Siravo's employment agreement
2 provided for the possibility of a bonus; that the amount of Siravo's lump sum
3 payment under the CEO SERP, effective May 1, 2002, was based upon the
4 Siravo's "Final Compensation," which was defined as the "monthly base salary
5 paid most recently while the President/CEO is a participant in the Program,
6 multiplied by twelve (12);" that the gross-up percentage in that CEO SERP was
7 the same as the percentage in the original Executive SERP. Siravo and Swedberg
8 deny the remaining allegations of Paragraph 169.

9 170. Siravo and Swedberg admit that Chairman Harvey approved the
10 proposed amendments to the CEO SERP and submitted it to other members of the
11 WesCorp board's executive committee, who also approved it. Siravo and
12 Swedberg lack information or knowledge sufficient to form a belief as to the truth
13 of the remaining allegations of Paragraph 170 and on that basis deny those
14 allegations.

15 171. Siravo and Swedberg admit that WesCorp's Board of Directors
16 approved amendments to the CEO SERP. Siravo and Swedberg lack information
17 or knowledge sufficient to form a belief as to the truth of the remaining allegations
18 of Paragraph 171 and on that basis deny those allegations.

19 172. Siravo and Swedberg admit that WesCorp's Board of Directors
20 adopted a resolution authorizing changes to the CEO SERP, which resolution
21 speaks for itself. Siravo and Swedberg refer to the resolution for its contents and
22 deny any characterization inconsistent with its terms.

23 173. Siravo and Swedberg admit that Robert Harvey, as Chairman of
24 WesCorp's Board of Directors, executed an amendment to the CEO SERP that
25 was prepared by Swedberg, which amendment speaks for itself. Siravo and
26 Swedberg refer to the amendment for its contents and deny any characterization
27 inconsistent with its terms. Siravo and Swedberg deny the remaining allegations
28 of Paragraph 173.

1 174. Paragraph 174 contains legal conclusions, to which no response is
2 required. To the extent these allegations require a response, they are denied.
3 Siravo and Swedberg deny the remaining allegations of Paragraph 174.

4 175. Siravo and Swedberg admit that under the President/CEO Retention
5 Program, Siravo's President/CEO Retirement Date was May 1, 2008; that he
6 received a lump sum SERP payment on or about May 13, 2008 of \$6,881,401; that
7 the amount he received was more than he would have received under the CEO
8 SERP before it was amended; and that he continued to serve as President/CEO of
9 WesCorp until on or about March 20, 2009. Siravo and Swedberg lack
10 information or knowledge sufficient to form a belief as to the truth of the
11 remaining allegations of Paragraph 175 and on that basis deny those allegations.

12 176. Siravo and Swedberg admit that Swedberg worked on amendments to
13 the Executive SERP, which amendments speak for themselves. Siravo and
14 Swedberg refer to the amendments for their contents and deny any characterization
15 inconsistent with their terms.

16 177. Siravo and Swedberg admit that on or about June 24, 2008, Siravo
17 presented amendments to the Executive SERP to the WesCorp Board of Directors,
18 and the Board of Directors adopted a resolution approving the amendments, which
19 resolution speaks for itself. Siravo and Swedberg refer to the resolution for its
20 contents and deny any characterization inconsistent with its terms.

21 178. Siravo and Swedberg admit that Swedberg retired from WesCorp at
22 the end of 2008, and that on January 6, 2009, he received a lump sum SERP of
23 \$1,223,962, which was more than the he would have received under the CEO
24 SERP before it was amended. Siravo and Swedberg lack information or
25 knowledge sufficient to form a belief as to the truth of the remaining allegations of
26 Paragraph 178 and on that basis deny those allegations.

27 179. Siravo and Swedberg admit that Lane was a participant in the
28 Executive SERP and that he wanted to leave his employment at WesCorp before

1 his expected retirement date under the Executive SERP. Siravo and Swedberg
2 lack information or knowledge sufficient to form a belief as to the truth of the
3 remaining allegations of Paragraph 179 and on that basis deny those allegations.

4 180. Siravo and Swedberg admit that Lane and Siravo executed an Early
5 Payout Agreement, which agreement speaks for itself. Siravo and Swedberg refer
6 to the agreement for its contents and deny any characterization inconsistent with
7 its terms. Siravo and Swedberg lack information or knowledge sufficient to form
8 a belief as to the truth of the remaining allegations of Paragraph 180 and on that
9 basis deny those allegations.

10 181. Siravo and Swedberg deny the allegations in Paragraph 181.

11 182. Siravo and Swedberg admit that Lane received payments in 2006,
12 2007 and 2008 in addition to his base compensation and bonus and that he left his
13 employment with WesCorp in 2008. Siravo and Swedberg lack information or
14 knowledge sufficient to form a belief as to the truth of the remaining allegations of
15 Paragraph 182 and on that basis deny those allegations.

16 **FIRST CLAIM FOR RELIEF**

17 (Breach of Fiduciary Duties – Against the Officer Defendants)

18 183. Siravo and Swedberg incorporate by reference their responses to
19 paragraphs 1 through 153 as though set forth in full. Swedberg is not named as a
20 defendant to this Claim and accordingly no response is required to paragraphs 184
21 through 198. To the extent the allegations require a response to paragraphs 184
22 through 198, Swedberg lacks information or knowledge sufficient to form a belief
23 as to the truth of the allegations, and on that basis denies them.

24 184. Paragraph 184 contains legal conclusions, to which no response is
25 required. To the extent the allegations require a response, they are denied.

26 185. Paragraph 185 contains legal conclusions, to which no response is
27 required. To the extent the allegations require a response, they are denied.
28

1 186. Paragraph 186 contains legal conclusions, to which no response is
2 required. To the extent the allegations require a response, they are denied.

3 187. Paragraph 187 contains legal conclusions, to which no response is
4 required. To the extent the allegations require a response, they are denied.

5 188. Paragraph 188 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, they are denied.

7 189. Paragraph 189 contains legal conclusions, to which no response is
8 required. To the extent the allegations require a response, Siravo lacks
9 information or knowledge sufficient to form a belief as to the truth of the
10 allegations of Paragraph 189 and on that basis they are denied.

11 190. Paragraph 190 contains legal conclusions, to which no response is
12 required. To the extent the allegations require a response, Siravo lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 allegations of Paragraph 190 and on that basis they are denied.

15 191. Paragraph 191 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, they are denied.

17 192. Paragraph 192 contains legal conclusions, to which no response is
18 required. To the extent the allegations require a response, they are denied. Siravo
19 denies that he breached any duties that he owed to WesCorp. Siravo lacks
20 information or knowledge sufficient to form a belief as to the truth of the
21 remaining allegations of Paragraph 192 and on that basis denies those allegations.

22 193. Paragraph 193 contains legal conclusions, to which no response is
23 required. To the extent the allegations require a response, they are denied. Siravo
24 denies that he breached any duties that he owed to WesCorp. Siravo lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 remaining allegations of Paragraph 193 and on that basis denies those allegations.

27 194. Paragraph 194 contains legal conclusions, to which no response is
28 required. To the extent the allegations require a response, Siravo lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations of Paragraph 194 and on that basis they are denied.

3 195. Paragraph 195 contains legal conclusions, to which no response is
4 required. To the extent the allegations require a response, they are denied. Siravo
5 lacks information or knowledge sufficient to form a belief as to the truth of the
6 remaining allegations of Paragraph 195 and on that basis denies those allegations.

7 196. Paragraph 196 contains legal conclusions, to which no response is
8 required. To the extent the allegations require a response, they are denied. Siravo
9 denies that he breached any duties that he owed to WesCorp. Siravo lacks
10 information or knowledge sufficient to form a belief as to the truth of the
11 remaining allegations of Paragraph 192 and on that basis denies those allegations.

12 197. Siravo denies the allegations of Paragraph 197.

13 198. Siravo denies the allegations of Paragraph 198.

14 **SECOND CLAIM FOR RELIEF**

15 (Breach of Fiduciary Duties – Against Defendants Rhamy, Updike, Dames, Osberg,
16 Longson and Harvey)

17 199. Siravo and Swedberg incorporate by reference their responses to
18 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not
19 named as defendants to this Claim and accordingly no response is required to
20 paragraphs 200 through 205. To the extent the allegations require a response to
21 paragraphs 200 through 205, Siravo and Swedberg lack information or knowledge
22 sufficient to form a belief as to the truth of the allegations, and on that basis deny
23 them.

24 200. Siravo and Swedberg are not named as defendants to this Claim and
25 accordingly no response is required.

26 201. Siravo and Swedberg are not named as defendants to this Claim and
27 accordingly no response is required.
28

1 202. Siravo and Swedberg are not named as defendants to this Claim and
2 accordingly no response is required.

3 203. Siravo and Swedberg are not named as defendants to this Claim and
4 accordingly no response is required.

5 204. Siravo and Swedberg are not named as defendants to this Claim and
6 accordingly no response is required.

7 205. Siravo and Swedberg are not named as defendants to this Claim and
8 accordingly no response is required.

9 **THIRD CLAIM FOR RELIEF**

10 (Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura, Cheney,
11 Rhamy, Kramer, Lentz, and Osberg)

12 206. Siravo and Swedberg incorporate by reference their responses to
13 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not
14 named as defendants to this Claim and accordingly no response is required to
15 paragraphs 207 through 212. To the extent the allegations require a response to
16 paragraphs 207 through 212, Siravo and Swedberg lack information or knowledge
17 sufficient to form a belief as to the truth of the allegations, and on that basis deny
18 them.

19 207. Siravo and Swedberg are not named as defendants to this Claim and
20 accordingly no response is required.

21 208. Siravo and Swedberg are not named as defendants to this Claim and
22 accordingly no response is required.

23 209. Siravo and Swedberg are not named as defendants to this Claim and
24 accordingly no response is required.

25 210. Siravo and Swedberg are not named as defendants to this Claim and
26 accordingly no response is required.

27 211. Siravo and Swedberg are not named as defendants to this Claim and
28 accordingly no response is required.

1 212. Siravo and Swedberg are not named as defendants to this Claim and
2 accordingly no response is required.

3 **FOURTH CLAIM FOR RELIEF**

4 (Breach of Fiduciary Duties – Against All Director Defendants)

5 213. Siravo and Swedberg incorporate by reference their responses to
6 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not
7 named as defendants to this Claim and accordingly no response is required to
8 paragraphs 214 through 220. To the extent the allegations require a response to
9 paragraphs 214 through 220, Siravo and Swedberg lack information or knowledge
10 sufficient to form a belief as to the truth of the allegations, and on that basis deny
11 them.

12 214. Siravo and Swedberg are not named as defendants to this Claim and
13 accordingly no response is required.

14 215. Siravo and Swedberg are not named as defendants to this Claim and
15 accordingly no response is required.

16 216. Siravo and Swedberg are not named as defendants to this Claim and
17 accordingly no response is required.

18 217. Siravo and Swedberg are not named as defendants to this Claim and
19 accordingly no response is required.

20 218. Siravo and Swedberg are not named as defendants to this Claim and
21 accordingly no response is required.

22 219. Siravo and Swedberg are not named as defendants to this Claim and
23 accordingly no response is required.

24 220. Siravo and Swedberg are not named as defendants to this Claim and
25 accordingly no response is required.

26 **FIFTH CLAIM FOR RELIEF**

27 (Breach of Fiduciary Duty – Against Defendants Siravo and Swedberg)

28

221. Siravo and Swedberg incorporate by reference paragraphs 1 through 23 and 154 through 178 as though set forth in full.

222. Paragraph 222 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

223. Siravo and Swedberg deny the allegations of Paragraph 223.

224. Paragraph 224 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied

225. Siravo and Swedberg deny the allegations of Paragraph 225.

226. Siravo and Swedberg deny the allegations of Paragraph 226.

SIXTH CLAIM FOR RELIEF

(Fraud -- Against Defendants Siravo and Swedberg)

227. Siravo and Swedberg incorporate by reference paragraphs 1 through 23, 154 through 178, and 222 through 226, as though set forth in full.

228. Paragraph 228 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

229. Siravo and Swedberg admit Exhibit 1 to the Second Amended Complaint is a true and correct copy of a memorandum dated November 2, 2007, that Swedberg sent to Robert Harvey, the Chairman of WesCorp's Board of Directors. Siravo and Swedberg also admit that on or about June 24, 2008, Siravo sent a similar memorandum. The memoranda sent by Siravo and Swedberg speak for themselves. Siravo and Swedberg refer to the memoranda for their contents and deny any characterization inconsistent with their terms. Siravo and Swedberg deny the remaining allegations in Paragraph 229.

230. Siravo and Swedberg deny the allegations in Paragraph 230.

231. Siravo and Swedberg deny the allegations in Paragraph 231.

232. Paragraph 228 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

233. Siravo and Swedberg deny the allegations in Paragraph 233.

1 234. Siravo and Swedberg deny the allegations in Paragraph 234.

2 **SEVENTH CLAIM FOR RELIEF**

3 (Breach of Fiduciary Duty -- Against Defendant Siravo)

4 235. Siravo and Swedberg incorporate by reference paragraphs 1 through
5 23, 154 through 182, inclusive as though set forth in full. Swedberg is not named
6 as a defendant to this Claim and accordingly no response is required to paragraphs
7 236 through 239. To the extent the allegations require a response to paragraphs
8 236 through 239, Swedberg lacks information or knowledge sufficient to form a
9 belief as to the truth of the allegations, and on that basis denies them.

10 236. Paragraph 236 contains legal conclusions to which no response is
11 required. To the extent that a response is required, the allegations are denied.

12 237. Paragraph 237 contains legal conclusions to which no response is
13 required. To the extent that a response is required, the allegations are denied.

14 238. Siravo denies the allegations in Paragraph 238.

15 239. Siravo denies the allegations in Paragraph 239.

16 **EIGHTH CLAIM FOR RELIEF**

17 (Unjust Enrichment -- Against Defendant Lane)

18 240. Siravo and Swedberg incorporate by reference their responses to
19 paragraphs 1 through 153, 154 through 182, and 236 through 239 as though set
20 forth in full. Siravo and Swedberg are not named as defendants to this Claim and
21 accordingly no response is required to paragraphs 241 through 244. To the extent
22 the allegations require a response to paragraphs 241 through 244, Siravo and
23 Swedberg lack information or knowledge sufficient to form a belief as to the truth
24 of the allegations, and on that basis deny them.

25 241. Siravo and Swedberg are not named as defendants to this Claim and
26 accordingly no response is required.

27 242. Siravo and Swedberg are not named as defendants to this Claim and
28 accordingly no response is required.

1 243. Siravo and Swedberg are not named as defendants to this Claim and
2 accordingly no response is required.

3 244. Siravo and Swedberg are not named as defendants to this Claim and
4 accordingly no response is required.

5 **AFFIRMATIVE DEFENSES**

6 As for their affirmative defenses, Siravo and Swedberg allege as follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 (Failure to State Claim)

9 245. The Second Amended Complaint fails to state facts sufficient to
10 constitute claims against Siravo and Swedberg upon which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 (Standing)

13 246. The NCUA lacks standing to assert the claims alleged in this action.

14 **THIRD AFFIRMATIVE DEFENSE**

15 (Business Judgment Rule, Due Diligence and Reasonable Investigation)

16 247. The First and Seventh Claims for Relief are barred by the business
17 judgment rule in that every act or omission challenged by the NCUA was made
18 after reasonable investigation and in good faith based upon reasonable grounds to
19 believe that such acts or omissions were reasonable and prudent under the
20 circumstances.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Comparative Fault)

23 248. The NCUA's recovery, if any, must be reduced to the extent that its
24 injuries, losses and/or damages, if any, were caused by the NCUA's own fault.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 (Ratification, Consent, Approval, Acquiescence and Participation)

27 249. The NCUA's Claims are barred, in whole or in part, by the NCUA's
28 knowledge, acquiescence, ratification, approval, participation in, and/or oversight

1 of WesCorp's investment strategies, risk asset efforts, purchase of MBS securities,
2 and other activities that the NCUA challenges as improper, including but not
3 limited to the NCUA's supervision and oversight of WesCorp, its on-site
4 examinations of WesCorp, and its approval of WesCorp's investments, investment
5 strategies, policies, and procedures.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 (Estoppel)

8 250. The NCUA's Claims are barred, in whole or in part, by the doctrine
9 of estoppel because WesCorp complied with the NCUA's regulations and
10 directives and/or because WesCorp's investments, investment strategies, policies,
11 and procedures were reviewed, accepted and approved by the NCUA and its
12 examiners.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 (Waiver)

15 251. The NCUA's Claims are barred, in whole or in part, by the doctrine
16 of waiver.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 (Laches)

19 252. The NCUA's Claims are barred, in whole or in part, by the doctrine
20 of laches.

21 **NINTH AFFIRMATIVE DEFENSE**

22 (Statute of Limitations)

23 253. The NCUA's Claims are barred, in whole or in part, by the applicable
24 statute(s) of limitations.

25 **TENTH AFFIRMATIVE DEFENSE**

26 (Intervening Cause)

27 254. The NCUA's Claims are barred, in whole or in part, because
28 WesCorp's losses, if any, were the result of one or more intervening causes, or

1 were caused by the acts and/or failures of other persons and/or entities, including
2 but not limited to the NCUA, rating agencies, underwriters, brokers, issuers,
3 auditors, investment bankers, financial advisors, and counsel.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 **(Superseding Causes)**

6 255. The NCUA's Claims are barred, in whole or in part, because the acts
7 and conduct of Siravo and/or Swedberg, including but not limited to the purchases
8 of securities and amendments of, and/or changes, to the Supplemental Executive
9 Retention Programs were approved and/or ratified by WesCorp's Board of
10 Directors, Executive Committee, individual directors, and/or the Asset Liability
11 Committee, and because WesCorp's losses were caused by supervening events
12 unconnected to Siravo and Swedberg, including macroeconomic and mortgage
13 industry events that affected WesCorp's business.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(No causation)**

16 256. The NCUA's Claims are barred, in whole or in part, because Siravo
17 and/or Swedberg did not directly or indirectly cause the alleged damages
18 complained of in the Second Amended Complaint and the NCUA seeks to hold
19 Siravo and Swedberg responsible for the alleged breaches by other parties,
20 including but not limited to the NCUA, rating agencies, underwriters, brokers,
21 issuers, auditors, investment bankers, financial advisors, and counsel.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **(Reliance on others)**

24 257. The NCUA's Claims are barred, in whole or in part, because the acts
25 or omissions of Siravo and/or Swedberg were made or occurred in reasonable good
26 faith reliance on the statements and representations of others upon which they was
27 entitled to rely, including but not limited to NCUA personnel and examiners, rating
28

1 agencies, underwriters, brokers, issuers, auditors, investment bankers, financial
2 advisors, and counsel.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Apportionment)**

5 258. Any damages that the NCUA may have suffered should be
6 apportioned according to the relative degrees of fault of other persons and/or
7 entities responsible for the NCUA's damages, including the NCUA, and any
8 alleged liability of Siravo and Swedberg should be reduced accordingly.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Lack of Injury)**

11 259. The NCUA's Claims are barred, in whole or in part, because the
12 NCUA has not suffered any legally cognizable injury or damage.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 **(No Entitlement to Exemplary or Punitive Damages)**

15 260. NCUA is precluded from recovering exemplary or punitive damages,
16 either in whole or in part, under the applicable provisions of the law, including,
17 without limitation, California Civil Code section 3294, the United States
18 Constitution and/or the California Constitution.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 **(Right to Assert Additional Affirmative Defenses)**

21 261. Siravo and Swedberg presently have insufficient knowledge or
22 information on which to form a belief as to whether there may be additional, as yet
23 unstated, affirmative defenses available. Thus, subject to discovery in this action,
24 Siravo and Swedberg expressly reserve their rights to assert additional affirmative
25 defenses.

26 **COUNTERCLAIMS**

27 For counterclaims, Siravo and Swedberg allege:
28

JURISDICTION

262. The Court has supplemental jurisdiction over these counterclaims under 28 U.S.C. § 1367(a), because these counterclaims and the purported claims alleged by the NCUA all form part of the same case or controversy concerning the parties' rights and responsibilities related to Siravo's and Swedberg's service as officers and employees of WesCorp.

PARTIES

263. Siravo served as President/CEO of WesCorp from May 1, 2002 to on or about March 20, 2009. Swedberg was employed by WesCorp from October 1998 until he retired in July 2009. He was the Director of Human Resources from October 1998 and served as the Vice President of Human Resources in 1999 until approximately April or May 2007. He then served as Vice President of Strategic Planning and Organizational Development until December 31, 2008, and was thereafter employed on a consultant basis until he retired in July 2009.

264. Counter-defendant National Credit Union Administration Board as Liquidator of Western Corporate Federal Credit Union ("NCUA") is the liquidating agent of WesCorp.

FACTUAL ALLEGATIONS

Policy 21

265. WesCorp's Board of Directors adopted a resolution regarding indemnification and insurance, codified in WesCorp's book of policies as "Policy 21."

266. WesCorp agreed in Policy 21 to indemnify WesCorp's current and former "officials" and "employees" "to the maximum extent permitted by either the laws of the state of California or the Model Business Corporation Act" (the "MBCA") "for any liability asserted against them in connection with judicial or administrative proceedings, formal or informal, to which they are or may become parties by reason of the performance of their official duties."

1 every allegation contained in paragraphs 262 to 279 as though fully set forth herein.

2 281. At all relevant time, Siravo and Swedberg were employees of
3 WesCorp.

4 282. California Labor Code Section 2802 provides that an employer "*shall*
5 indemnify his or her employee for all necessary expenditures or losses incurred by
6 the employee in direct consequence of the discharge of his or her duties[.] "

7 283. NCUA as liquidator of WesCorp is obligated to indemnify and
8 reimburse Siravo and Swedberg for their defense costs as they are incurred in this
9 litigation under the California Labor Code Section 2802.

10 284. Siravo and Swedberg have incurred and paid attorneys fees and costs
11 in defense of the claims asserted by NCUA as liquidator of WesCorp in this
12 litigation.

13 285. The NCUA has failed to reimburse Siravo and Swedberg for the
14 attorney's fees and costs they have paid to date.

15 286. Siravo and Swedberg have incurred damages as a result of the
16 NCUA's failure to reimburse Siravo and Swedberg for their attorney fees and costs
17 in an amount to be determined at trial.

18 **THIRD COUNTERCLAIM**

19 (Indemnification under Policy 21)

20 287. Siravo and Swedberg incorporate by reference and re-allege each and
21 every allegation contained in paragraphs 262 to 286 as though fully set forth herein.

22 288. WesCorp agreed in Policy 21 to indemnify Siravo and Swedberg "to
23 the maximum extent permitted by either" California law *or* the MBCA.

24 289. Siravo and Swedberg demand indemnity under Policy 21 to the fullest
25 extent permissible under either California law or the MBCA and/or defense costs to
26 the fullest extent permissible under either California law or the MBCA.

27 290. Siravo and Swedberg also demand recovery of costs and attorneys fees
28 incurred to secure the indemnity provided for in Policy 21.

1 291. If NCUA refuses to indemnify Siravo and Swedberg pursuant to
2 Policy 21, they will suffer damages in an amount to be determined at trial.

3 **FOURTH COUNTERCLAIM**

4 (Declaratory Relief)

5 292. Siravo and Swedberg incorporate by reference and re-allege each and
6 every allegation contained in paragraphs 262 to 291 as though fully set forth herein.

7 293. The NCUA is obligated to advance to Siravo and Swedberg their
8 attorney's fees and costs incurred in defense of this litigation under Policy 21, the
9 MBCA, and California Labor Code Section 2802.

10 294. The NCUA has failed to respond to Siravo's and Swedberg's request
11 for advancement of their attorney's fees and costs incurred in defense of this
12 litigation.

13 295. The rights of the parties with respect to the advancement of attorney's
14 fees and costs incurred in defense of this litigation can be determined only by
15 declaratory relief.

16 **FIFTH COUNTERCLAIM**

17 (Declaratory Relief)

18 296. Siravo and Swedberg incorporate by reference and re-allege each and
19 every allegation contained in paragraphs 262 to 295 as though fully set forth herein.

20 297. WesCorp promised in Policy 21 to "purchase and maintain" insurance
21 "against any liability asserted against" current and former officials and employees,
22 including but not limited to Siravo and Swedberg.

23 298. The Policy that WesCorp purchased was inadequate to fulfill this
24 promise.

25 299. WesCorp purchased an insurance policy from CUMIS Insurance
26 Society, which has taken the position that the claims asserted against Siravo and
27 Swedberg in this action are excluded from coverage under the insurance policy.

28 300. Because the insurance policy does not cover Siravo and Swedberg for

1 “any liability,” WesCorp breached the promise to provide insurance coverage for
2 Siravo and Swedberg in Policy 21.

3 301. Because CUMIS invoked various exclusions to deny most coverage to
4 Siravo and Swedberg, but for WesCorp’s failure to comply with its obligations and
5 obtain adequate insurance coverage, Siravo and Swedberg would have been
6 covered for all of the costs and claims related to this litigation.

7 302. An actual existing and bona fide controversy exists between Siravo
8 and Swedberg, on the one hand, and the NCUA, on the other hand, as to NCUA’s
9 liability for advancement and indemnification, in that:

10 303. Policy 21 promises to maintain insurance coverage for “any liability”
11 asserted against Siravo and Swedberg, yet the CUMIS insurance policy does not
12 cover the current action.

13 304. NCUA has declined to pay for Siravo’s and Swedberg’s defense costs.

14 305. The rights of the parties under Policy 21 can be determined only by
15 declaratory relief.

16 **PRAYER**

17 WHEREFORE, Siravo and Swedberg pray for judgment against
18 plaintiffs as follows:

19 1. That Plaintiff NCUA as Liquidating Agent for WesCorp takes nothing
20 by the Complaint and that the Complaint be dismissed with prejudice.

21 2. That judgment be entered in favor of Siravo and Swedberg, and
22 against Plaintiff.

23 3. That the NCUA be ordered to advance Siravo’s and Swedberg’s
24 defense costs in this litigation.

25 4. That Siravo and Swedberg be awarded damages on their
26 counterclaims, in amounts to be determined at trial.

27 5. That the Court adjudge and declare that NCUA is obligated to pay to
28 advance to Siravo and Swedberg their defense costs incurred in this action and to

1 the fullest extent any liability incurred by Siravo and Swedberg because of the
2 inadequate insurance policy purchased by WesCorp in breach of its promise to
3 purchase and maintain insurance under Policy 21.

4 6. That Siravo and Swedberg be awarded their costs and
5 reasonable attorneys' fees.

6 7. That Siravo and Swedberg be granted such other and further
7 relief as the Court may deem just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Siravo and Swedberg hereby demand a jury trial

10
11 Dated: August 15, 2011

RICHARD E. DROOYAN
LAURA SMOLOVE
Munger, Tolles & Olson LLP

12
13
14 By 
15 RICHARD E. DROOYAN

16 Attorneys for Robert A. Siravo and
17 Thomas E. Swedberg
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28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, the undersigned, declare that I am over the age of 18 and not a party to the within cause. I am employed by Munger, Tolles & Olson LLP in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

On August 15, 2011, I served upon the interested party(ies) in this action the foregoing document(s) described as:

Answer and Counterclaim of Defendants Robert A. Siravo and Thomas E. Swedberg to Second Amended Complaint

☒ By placing ☐ the original(s) ☒ a true and correct copy(ies) thereof, as set out below, in an addressed, sealed envelope(s) clearly labeled to identify the person(s) being served at the address(es) set forth on the attached service list.

☒ **BY MAIL (AS INDICATED ON THE ATTACHED SERVICE LIST)** I caused such envelope(s) to be placed in interoffice mail for collection and deposit in the United States Postal Service at 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California, on that same date, following ordinary business practices. I am familiar with Munger, Tolles & Olson LLP's practice for collection and processing correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

☐ **BY FEDERAL EXPRESS PRIORITY OVERNIGHT DELIVERY (AS INDICATED ON ATTACHED SERVICE LIST)** I delivered the sealed Federal Express envelope(s) to an employee authorized by Federal Express to receive documents, with delivery fees paid or provided for.

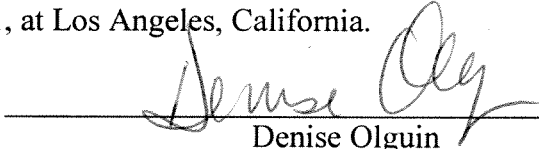
☐ **BY FACSIMILE (AS INDICATED ON ATTACHED SERVICE LIST)** By causing to be sent a true and correct copy(ies) of said document via facsimile transmission. The transmission was reported as complete and without error. A true and correct copy of the machine's transmission report, indicating the date and time that the transmission was completed without error is attached to this proof of service and is incorporated herein by this reference. The telephone number of the facsimile machine I used was (213) 683-9510. This facsimile machine complies with Rule 2003(3) of the California Rules of Court.

☐ **(STATE)** I declare under penalty of perjury that the foregoing is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

See attached Service List

Executed on August 15, 2011, at Los Angeles, California.


Denise Olguin

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National Credit Union Administration Board v. Siravo, et al.

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